

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 272 of 1993

with

MISC.CIVIL APPLICATION No 420 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRI SHATRUSHALAYJI DIGVIJAYSINHJI

Versus

UNION OF INDIA

Appearance:

1. Civil Revision Application No. 272 of 1993
MR NILESH A PANDYA for Petitioner
MR.MIHIR JOSHI WITH
MR MANISH R BHATT for Respondent No. 1
2. Misc.Civil ApplicationNo 420 of 1995
MR NILESH A PANDYA for Petitioner
MR.MIHIR JOSHI WITH
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

ORAL JUDGEMENT

1. This CRA came to be instituted by Snhgantrushalyasinhji Digvijaysinhji Jadeja against the Union of India, the Commissioner of Income Tax and the Commissioner of Income Tax(Recovery). The CRA was filed challenging the order below Exh.317 in Civil Suit No.19/83 which was pending in the court of Civil Judge(SD), Jamnagar thereby challenging the impugned order at Annexure "K" which is to be found in the compilation of page 105. The said CRA was posted for final hearing before this court and after hearing the learned counsel appearing for both parties at length and with a view to seeing that interest of the Ex-ruler in the properties owned by him is fully protected and his properties are not just auctioned for minimum price as it happens ordinarily in public auction this court took trouble of passing two orders, one dated 28.4.93 whereby on consensus of the parties certain directions were issued and rule on CRA was made absolute. The directions which were then issued were five in number and they are set out herein:

"(i) It is directed that the Tax Recovery Officer, namely, 4th respondent shall auction the flats in question as indicated to him by the petitioner-plaintiff.

(ii) It is also agreed between the parties that all the expenses incurred in connection with the said sale including the expenses for advertisement shall be borne by the plaintiff.

(iii) It is also brought to the notice of the court that sale of one plot has already taken place but said sale is not confirmed. In view of the fact that the other plots are under orders to be sold as per directions given above it would be just and proper not to confirm the sale of aforesaid plot which is already sold. It is accordingly directed that the sale of the aforesaid plot shall not be confirmed till other plots are disposed of as per the above directions.

(iv) It is also directed that the liabilities arising because of nonconfirmation of sale in favour of party who have purchased the aforesaid plot shall

be with that of the petitioner-plaintiffs.

(v) It is also directed that the arrangement which is reached between the parties as aforesaid shall remain in operation till the first sale of such plots"

2. It appears that thereafter one MCA No.420/95 was moved by the Union of India and the Commissioner of Income Tax for review of the order passed by this court on 20.3.93 requesting the court to absolve the Union of India and Tax Recovery Officer etc from the concessions made by them with regard to its consent and convenience which was granted to Shatrushalyasinhji in the matter of sale of property by public auction for recovery of tax dues payable by him. At the hearing of said MCA which was moved by the Union of India initially none appeared for said Shatrushalyasinhji but Mr.Prashant Desai learned counsel who was then representing him stated that despite his efforts no instructions were received. On such statement being made the Union of India and Tax Recovery Officer etc, the MCA for review was granted and the CRA was ordered to be notified for further hearing before this court.

3. Since no progress was made in the matter thereafter the CRA is notified before this court for final hearing and despite all sincere attempts made by the Ld.counsel Mr.P.G.Desai for Shatrushalyasinhji Jadeja-original petitioner he has not come to give him any instructions. He has also taken pains to issue Registered AD notice to said Shatrushalyasinhji Jadeja dated 1.10.96 and the AD receipt thereof duly signed by said party on 15.10.96 is produced on record. By the said notice Mr.Desai has informed him that since he has failed to appear rule nisi was issued on 22nd June, 1995 and same was made returnable on 17.7.95 and as per the record of this court summons of said rule nisi was also served on him. He was also informed that since no appearance is made by him and since appearance of Mr.Desai continues and since he has no instructions as to why he has failed to comply with the earlier two orders of the court, he has retired from the proceedings and he may make arrangement for appointment of another advocate within a fortnight. Despite receipt of said notice said Shatrushalyasinhji has not made any alternative arrangement and has not engaged any advocate. Advocate who was representing him has no instructions in the matter and in that view of the matter this CRA which is of the year 1993 and which was in fact with the consent of the parties disposed of in the manner so that no

proprietary damage is done to his entire property, is now placed before this court for final hearing and for appropriate orders. In view of the note filed by Mr.P.G.Desai seeking permission of this court to retire from the proceedings on the ground that he has no instructions after serving registered AD notice on the party, he shall have to be permitted to retire from the proceedings. The question is as to whether a fresh notice is required to be issued to the party, especially when the party has appeared on two occasions earlier and two orders were sought from the court and the auction of the property which was to be put to public auction for recovery of Income Tax revenues was thwarted has played smart both with the advocate and with the court. Mr.Mihir Joshi, learned advocate for respondent has very vehemently urged before this court that the original petitioner before this court has taken this court for a ride and has also befooled the Income Tax department so as to see that recovery of tax dues is thwarted for years together. Having agreed to the consent terms as back as 1993 Shatrushalyasinhji-the original plaintiff has not only backed out, but has thereafter by deliberately not giving any instructions to his advocate thwarted the entire proceedings over a period of 7 years and what damage he has done to the claim of the Government for its admitted revenue due and payable by said Shatrushalyasinhji is yet to be assessed. In my opinion, no lenient view of the matter could be taken and the matter shall have to be decided on merits. The petitioner has challenged the legality and validity of the order passed below exh.317 and 318 which are to be found at page 105 of the compilation. Exh.92 was the application given by the original plaintiff for directing the Union of India and the Tax Department to auction the land as per the plans submitted by him, and he has accordingly submitted seven plans. Various averments were made by him in the said application to contend before the court that the land should be sub-plotted or should be divided into plots so that the buyers will be available and they will be in a position to pay better market price to the department. In fact, the Tax Recovery Officer has issued notice for sale of about 17924.08 Sq.Mtrs of Valkeshnagar, Phase IV by public auction. The said plot was sought to be subplotted into 116 plots out of which according to Shatrushalyasinhji 87 plots were of the same size, shape and area each comprising of 150 meters and if the land was sold in such small plots the buyers will be available who would be in a position to pay better market price. According to him as stated in the said application it would be in the best interest of the Union of India and the Tax Recovery

officer to recover maximum possible market price for the entire land if that method is adopted. Therefore, in the said application he prayed that the department should be directed to recover outstanding dues of tax from him by abandoning their plan of auctioning the entire plot of land which would only bring very little amount of tax dues and instead the plot should be subplotted into small plots in which case better price could be recovered. Said application was rejected by the impugned order.

4. Another application at Exh.318 which is to be found at page 102 of the compilation was filed inter alia praying for stay of auction which was fixed on 15.2.93 on various grounds and ultimately the trial court has by the impugned order dismissed both the applications as unwarranted and permitted the Income Tax department to follow the procedure under Rule 59 to bid and purchase the land or under Rule 68A to accept the property in satisfaction of the dues from the defaulter since more than 15 years had then passed in recovering the dues. The court observed that if the dues were permitted to be accumulated by not exercising of said powers, the property is likely to be lost as number of persons might encumber the land or the properties might also deteriorate and therefore the request of Shatrushalyasinhji Jadeja made by the aforesaid two applications came to be rejected. The Union of India and the Tax Recovery Officer and others were permitted to proceed further to recover the amount under the provisions of the Act and I.T.Rules.

5. In my opinion, even initial interference of this court by issuance of notice was solely with a view to see that in public auction the very huge property of ex-Ruler is not just sold away for minimum price, and better price is fetched which may help both the departments as well as the ex-ruler. The lawful and beneficial object which was sought to be achieved was deliberately, skillfully, diabolically and schemingly flouted who in the opinion of this court does not deserve to be called a Ruler and this court did commit a blunder of showing some mercy so that his property may bring better price as and when put to auction. He has totally misused and misplaced the sympathy of this court and I for myself do not find any flaw whatsoever in the order passed by the trial court. Neither jurisdictional error nor error of law or irregularity attached to the jurisdiction of the court is pointed out which would call for interference of this court. In the result CRA fails. Rule is discharged. No costs. Department is permitted to proceed further with the auction sale forthwith without any loss of time.

